



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a Resolution authorizing the City Manager to execute a Reimbursement Agreement with Frontiers Community Builders for outside Planning Services Related to the Westside and Southwest Gateway Annexation Projects and Associated Development Applications

MEETING DATE: May 4, 2005

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: That the City Council adopt a Resolution authorizing the City Manager to execute a Reimbursement Agreement with Frontiers Community Builders for outside Planning Services Related to the Westside and Southwest Gateway Annexation Projects and associated development applications.

BACKGROUND INFORMATION: Two large annexation requests have recently been filed with the Community Development Department. The first, the Westside annexation totals approximately 151 acres and is generally located in the area south of the WID canal, and west of Lower Sacramento Road. The second is the Southwest Gateway Annexation comprised of approximately 350 acres in the area south of Kettleman Lane and west of Lower Sacramento Road. The Applicant on both projects, Frontiers Community Builders desires to expedite the review and approval process in excess of the current capacity of the Community Development Department. Accordingly, City staff and Frontiers have negotiated the attached Agreement to allow the City to contract with an outside planning firm to provide plan review services for the applications at the expense of Frontiers.

The Agreement provides that Frontiers will deposit \$85,000 with the City against which the City will bill all of the Contract Planner's invoices for the annexation applications. The agreement also provides that the deposit will maintain an "evergreen" balance of at least \$30,000 and the developer will deposit \$8,000 for costs related to drafting and researching a Development Agreement.

In addition to providing a benefit for the developer, this arrangement will allow the City to closely scrutinize the development application and take greater care in processing the development entitlements.

The applicant has indicated that he plans to provide for a public presentation of the project in the near future.

The contract provides that Frontiers will have no authority to control or direct the timelines, approvals or recommendations of the Contract Planner.

APPROVED:

A handwritten signature in black ink, appearing to read "Blair King", written over a horizontal line.

Blair King, City Manager

FISCAL IMPACT: The Reimbursement Agreement stipulates that Frontiers Community Builders will reimburse the City for expenses incurred through the Professional Services Agreement between the City of Lodi and LSA Associates, Inc. for processing the Westside and Southwest Gateway annexations and associated development applications.

FUNDING AVAILABLE: Not Applicable


Janet S. Keeter, Deputy City Manager

Attachment: Reimbursement Agreement

cc: Frontiers Community Builders
LSA Associates, Inc.

Frontiers Community Builders Annexation Application Review Reimbursement Agreement

THIS AGREEMENT is entered into this 4th day of May, 2005, (the "Effective Date"), between FRONTIERS COMMUNITY BUILDERS., Inc., a California Corporation ("Developer") and the CITY OF LODI, a municipal corporation organized and existing under the laws of the State of California ("City").

RECITALS

This Agreement is predicated upon the following findings:

- A. Developer submitted an application to annex 501 gross acres of real property to the City (the "Property"), generally west of Lower Sacramento Road, South of Vine Street and North of Harney Lane ("Project"). A legal description of the Property is attached to this Agreement as Exhibit "A" and incorporated herein by reference.
- B. Developer desires to fast track its plan review for the Project on a time frame that is beyond the capacity of the City's in house planning staff.
- C. The City is willing to hire additional contract staff to expedite the review of Developer's Project on the condition that developer reimburse the City for its expense in contracting with an outside vendor ("Contract Planner").
- D. The parties contemplate that they may enter into a later Development Agreement regarding the construction of the Project pursuant to the authorities set forth in Government Code Section 65864 et seq. However, the parties acknowledge that this agreement is not a development agreement, and does not commit them to enter a development agreement at some later date or provide any land use entitlements.
- E. The Parties further acknowledge that the California Fair Political Practices Act requires that Developer have no direction or control over the response times, selection, supervision, activities, recommendations or decisions of the Contract Planner.

NOW THEREFORE, the parties agree as follows:

1. Contract Planner/Reimbursement. City will contract directly with a Contract Planner to provide review services for the Project. Developer will reimburse City

for all costs associated with or arising out of the contract with the Outside Planner to the extent that they relate to the Project.

2. Deposit. Developer shall deposit \$85,000.00 cash (or other equivalent security in a form approved by the City Manager) with the City within 15 days of receiving notice of the execution of a contract between the City and the Contract Planner. The City will hold the deposit and charge invoices received from the Contract Planner against the deposit. In the event that the deposit is drawn down by the Contract Planner's charges to a balance of less than \$30,000.00, Developer shall deposit additional funds to maintain an evergreen balance of at least \$30,000.00("Evergreen Deposit"). Developer shall deposit the Evergreen Deposit within 15 days of receiving notice from the City. In the event that funds remain on deposit at the conclusion of the services contemplated by this agreement; they shall be refunded to Developer.
3. Reimbursement of Legal and Processing Costs: Developer agrees to reimburse the City for the legal costs for researching, drafting and administering this Agreement and the anticipated Development Agreement. Developer shall deposit \$8,000.00 cash (or other equivalent security in a form approved by the City Manager) with the City within 15 days of the execution of this Agreement. The City will hold the deposit and charge all inside and outside legal costs incurred against the Deposit. In the event that the deposit is drawn down by the Contract Planner's charges to a balance of zero, Developer shall reimburse the City for its legal expenses within 30 days of receiving an invoice from the City.
4. Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of the Agreement inure to the successors in interest to the parties to it.
5. Relationship of Parties.
 - a. It is understood that the contractual relationship between the City and Developer is such that Developer is an independent contractor and not the agent of the City; and nothing herein shall be construed to the contrary.
 - b. City and Developer agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Developer and City joint venturers or partners.
 - c. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.
6. No Entitlements Granted.

Nothing in this Agreement shall provide developer with any right to secure approval of any development plan or other entitlement. In addition, Developer agrees that it will have no rights to select the Contract Planner; or direct the work, response times, recommendations or approvals of the Contract Planner

7. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Developer and its representative and Developers' successors and assigns. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below:

Notice to City: City of Lodi
City Manager
221 W. Pine St
Lodi, CA 95240

Notice to Developer: Frontiers Community Builders
3247 West March Lane, Suite 220
Stockton, CA 95219

8. Indemnification, Defense and Hold Harmless.
- a. Developer agrees to and shall indemnify, defend and hold the City, its council members, officers, agents, employees and representatives harmless from liability for damage or claims of damage, for personal injury, including death, and claims for property damage which may arise from City's hiring of a Contract Planner and the service provided thereby..
 - b. Developer's obligation under this section to indemnify, defend and hold harmless the City, its council members, officers, agents employees, and representatives shall not extend to liability for damage or claims for damage arising out of the sole negligence or willful act of the City, its council members, officers, agents, employees or representatives. In addition, developer's obligation shall not extend to any award of punitive damages against the City resulting from the conduct of the City, its council members, officers, agents, employees or representatives.
 - c. With respect to any action challenging the validity of this Agreement or any environmental, financial or other documentation related to approval of this Agreement, Developer further agrees to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the City or plaintiff (s) filing such an action should a court award plaintiff(s) damages, costs and fees, and to provide a defense for the City in any such action.

IN WITNESS WHEREOF this Agreement has been executed by the parties on the day and year first above written.

THE CITY OF LODI,

By: _____
Blair King, City Manager

Attest: _____
Susan J. Blackston, City Clerk

DEVELOPER:

Frontiers

By: _____

Approved as to Form

D. Stephen Schwabauer, City Attorney

RESOLUTION NO. 2005-96

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A REIMBURSEMENT
AGREEMENT WITH FRONTIERS COMMUNITY BUILDERS FOR
OUTSIDE PLANNING SERVICES RELATED TO THE WESTSIDE
AND SOUTHWEST GATEWAY ANNEXATION PROJECTS AND
ASSOCIATED DEVELOPMENT APPLICATIONS

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Reimbursement Agreement with Frontiers Community Builders for outside planning services related to the Westside and Southwest Gateway Annexation Projects and associated development applications.

Dated: May 4, 2005

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I hereby certify that Resolution No. 2005-96 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 4, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, and Mayor Beckman

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk